

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAPTRAN/TANGLEWOOD LLC,

Plaintiff,

V.

THOMAS N. THURLOW & ASSOCIATES,
A PROFESSIONAL CORPORATION,
THOMAS N. THURLOW, LAW OFFICES
OF TONY MARTINEZ, P.C.,
PETROFF & ASSOCIATES, LTD.,
L.L.P., and ABRAHAM, WATKINS,
NICHOLS, SORRELS, MATTHEWS
& FRIEND,

Defendants.

THE UNIVERSITY OF CHICAGO

CIVIL ACTION NO. H-08-2374

MEMORANDUM AND ORDER

Pending are Defendant Law Offices of Tony Martinez, P.C.'s ("Martinez") Motion to Deposit Disputed Funds into Registry of Court (Document No. 29) and Defendant Abraham, Watkins, Nichols, Sorrels, Matthews & Friend's ("Abraham Watkins") Motion for Partial Summary Judgment (Document No. 36). After having reviewed the motions, responses, and applicable law, the Court concludes as follows.

Martinez's motion was to deposit \$1,667,369.87 into the registry of the Court because "[b]oth Thurlow and CapTran claim said funds, and a *bona fide* and pending dispute exists regarding those competing claims." Plaintiff CapTran/Tanglewood, L.L.C.

("CapTran") responded that there was no dispute regarding the funds, and that they belong to CapTran.¹ After initially responding that there was a dispute, Defendants Thomas N. Thurlow & Associates, P.C., and Thomas N. Thurlow (collectively "Thurlow") have now filed an Amended Response withdrawing their original response, and stating:

Thurlow waives any right, title or interest in all of the [funds] currently held by the Law Offices of Tony Martinez, P.C. which are the subject of Martinez's motion. Thurlow unequivocally agrees that any such funds held by the Law Offices of Tony Martinez, P.C. should be immediately paid to CapTran.²

"[A] district court should not grant a Rule 67 motion unless the question of entitlement is genuinely in dispute." Id. (citing Gulf States Utils. Co. v. Ala. Power Co., 824 F.2d 1465, 1475 (5th Cir. 1987)); see also 12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2991 (2d ed. 1997). Because there is now no dispute between CapTran and Thurlow as to CapTran's entitlement to Martinez's funds, Martinez's motion will be denied.

Abraham Watkins's Motion for Partial Summary Judgment will be denied because genuine issues of material fact exist on whether and when Abraham Watkins received authenticated notification that Thurlow had assigned to CapTran accounts receivable from Abraham

¹ Document No. 33 at 5.


² Document No. 39.

Watkins and that Abraham Watkins was to make payment(s) to CapTran, the assignee. Accordingly, it is

ORDERED that Defendant Law Offices of Tony Martinez, P.C.'s Motion to Deposit Disputed Funds into Registry of Court (Document No. 29) is DENIED, and Defendant Abraham, Watkins, Nichols, Sorrels, Matthews & Friend's Motion for Partial Summary Judgment (Document No. 36) is DENIED.

The Clerk will enter this Order, providing a correct copy to all counsel of record.

SIGNED in Houston, Texas, on this 19th day of January, 2010.


EWING WERLEIN, JR.
UNITED STATES DISTRICT JUDGE